Halle Enterprises, Inc. and Comar Management, Inc., *and* Fidel Perez *and* Roberto Velorio Medina *and* Francisco *and* Flores Nestor Cotton *and* Juan Manuel Vasquez *and* Jose A. Alfaro *and* Jose Garcia *and* Francisco Gatica *and* Jose Climes *and* Donald Urbina *and* Israel Flores. Cases 5–CA–27676, 5–CA–27677, 5–CA–27678, 5–CA–27679, 5–CA–27680, 5–CA–27681, 5–CA–27682, 5–CA–27683, 5–CA–27684, 5–CA–27685, and 5–CA–27686

March 31, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On July 23, 1999, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent filed an answering brief, cross-exceptions, and a supporting brief. The Charging Party filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified below and to adopt the recommended Order as modified.[2]

We disagree with the judge's finding that the offer of reinstatement made by Respondent's president, Warren Halle, to four senior maintenance employees[3] who had been unlawfully discharged cut off any entitlement the employees had to reinstatement and backpay as of November 7, 1997.[4] Rather, we find that Halle's offer was superceded when Respondent's property manager, Wayne Ellis, subsequently placed conditions on that offer. The relevant facts, more fully set forth in the judge's decision, are as follows.

The Respondent is in the business of building homes and managing apartment complexes. At the Willowbrook Apartments, it employed the 11 Charging Parties as maintenance technicians primarily engaged in apartment repairs and renovations including plumbing and electrical work. On the morning of November 4, the employees complained to Resident Manager Michelle Summers-Davis regarding their wages, hours, and working conditions and demanded wage increases, uniforms, safety equipment, tools, and better working conditions. Summers-Davis told the employees that Ellis was the only person who could respond to their requests. Shortly thereafter, Ellis arrived at the apartment complex, told the employees that they were all fired, and ordered them to leave the premises.[5] For the next 2 weeks, a number of employees picketed outside the Respondent's facility. The employees carried signs that notified the public that they had been fired by the Respondent for protesting for better working conditions and higher wages.

Meanwhile, on November 5, Ellis told the employees that they could have their jobs back if they filled out new applications. When the employees learned that the job offers did not include their present benefits and seniority, they refused to return to work. On or around November 7, as found by the judge, Halle and Vice President Joe Dodson met with discharged employee Israel Flores in Halle's office. Halle informed Flores, as spokesperson for the employees, that he wanted him and the three other senior technicians[6] to come back to work without any conditions. When the four senior technicians returned to work, however, on or about November 10, Ellis informed them that they could retain their present benefits and seniority only if they signed a waiver form.[7] When the four employees refused to sign the waiver, Ellis told them they could not return to work.

Relying on Halle's credited testimony, the judge found that the Respondent made specific, unequivocal, and unconditional offers of reinstatement to the four senior maintenance employees and that their failure to accept this offer tolled any backpay obligation as of November 7. The judge also found, however, that when the four

[1] The General Counsel and the Charging Parties have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The General Counsel has excepted to the judge's statement that some of the discriminatees were offered free apartments or reduced rents in return for being on call during evening hours. The record shows that the Respondent utilized rent abatement as a supplementary compensation method to pay employees for their work.

[2] We shall modify the judge's recommended Order to include a paragraph, inadvertently omitted by the judge, providing that the Respondent cease and desist from discriminatorily discharging employees. Because we disagree with the judge's finding that employees Fidel Perez, Roberto Velorio Medina, Francisco Flores, and Israel Flores refused unconditional offers to return to work, we would not toll their backpay as of November 7, 1997, and therefore disavow the judge's statement in par. 3 of the remedy section of his decision.

[3] The Respondent does not contend that the remaining seven employees were offered unconditional reinstatement at any time.

[4] All dates are in 1997 unless otherwise indicated.

[5] No party excepted to the judge's finding that the discharges of the 11 employees violated Sec. 8(a)(1) of the Act.

[6] The four senior technicians were Fidel Perez, Roberto Valerio Medina, Francisco Flores, and Israel Flores.

[7] The document stated: "I,_____, understand that in the future, returning my keys, pager and radio, and failing to perform my duties upon request will be an indication that I have resigned my position with COMAR Management. I understand that COMAR management has decided to reinstate me and will continue my benefits as though I had not left due to the short length of time between my leaving and my being reinstated. I understand that participation in legal action against COMAR Management or any of its agents and the picketing of Willowbrook Apartments while in the employment of COMAR Management is not necessary and will not be tolerated. I have read and agree with the above statements."

employees attempted to return to their jobs pursuant to Halle's offer of reinstatement, Ellis asked them to sign the waiver as a condition of reinstatement, and that Dodson also made a conditional offer of reinstatement to the employees sometime during the week of November 10.[8]

It is well settled that the burden is on the Respondent to communicate to its employees an offer that is firm, clear, and unconditional.[9] Ellis' statement that they could not return to work and retain their benefits and seniority unless they signed the waiver was not an unconditional offer that would toll the backpay of the four senior technicians.[10] Therefore we find, contrary to the judge, that the entitlement of Perez, Medina, Francisco Flores, and Israel Flores to reinstatement and backpay was not cut off on November 7.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Halle Enterprises, Inc. and Comar Management, Inc., Silver Spring, Maryland, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a) and reletter the following paragraph.

"(a) Discriminatorily discharging employees for concertedly complaining about their wages, hours, and working conditions by demanding wage increases, uniforms, safety equipment, and tools."

2. Substitute the attached notice for that of the administrative law judge.

[8] The judge found at fn. 7 of his decision that although Dodson's offer contained restrictions, Halle's offer did not, and since Halle was the Respondent's president, his offer would supercede the subsequent statement of a lower-level management official. Although he does not so state, the judge's reasoning also would seem to apply to Ellis' insistence that the employees sign the waiver. We do not agree with the judge's reasoning. Even though Halle's offer was unconditional it occurred approximately 3 days earlier than the Dodson and Ellis offers. The discriminatees had every reason to conclude that Ellis and Dodson were stating the full terms of the Respondent's offer at the time the employees reported for reinstatement (including any amendments that might have been made to Halle's offer since it was originally made) and that the Respondent's offer was the conditional offer made by Ellis.

[9] *L. A. Water Treatment*, 263 NLRB 244, 246 (1982); *Don Pizzolato, Inc.*, 249 NLRB 953, 956 (1980).

[10] *Tony Roma's Restaurant*, 325 NLRB 851 (1998).

Member Hurtgen dissented in *Tony Roma's* and he adheres to that dissent. In that case, Member Hurtgen disagreed with the majority's conclusion that an employer failed to make a valid, unconditional offer of reinstatement. By contrast, in the instant case, the Respondent's offer of November 7 was clearly valid at the time. Thus, the issue is whether the subsequent events of November 10 rendered the offer conditional. Member Hurtgen agrees with his colleagues that it did so.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for concertedly complaining about wages, hours, and working conditions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Fidel Perez, Roberto Velorio Medina, Francisco Flores, Nestor Cotton, Juan Manuel Vazquez, Jose A. Alfaro, Jose Garcia, Francisco Gatica, Jose Climes, Donald Urbina, and Israel Flores full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make the above-noted employees whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of the above-noted employees, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

> HALLE ENTERPRISES, INC. AND COMAR MANAGEMENT, INC.

Gabriel A. Terrasa, Esq., for the General Counsel.
Fred S. Sommer, Esq., of Rockville, Maryland, for the Respondent-Employer.
Carla M. Mathers, Esq., of College Park, Maryland, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me in Washington, D.C., on May 10 and 11, 1999, pursuant to a complaint (the complaint) and notice of

hearing issued by the Regional Director for Region 5 of the National Labor Relations Board (the Board) on August 27, 1998. The complaint, based upon original charges filed on April 28, 1998, by the 11 individuals, alleges that Halle Enterprises, Inc. and Comar Management, Inc., single employer (the Respondent or Halle), has engaged in certain violations of Section 8(a)(1) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that the Respondent discharged 11 employees because of their protected concerted activities on November 4, 1997.[1]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel,[2] the Charging Parties,[3] and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation engaged in the business of building homes and managing residential apartment housing, with an office and place of business in Silver Spring, Maryland, where it annually purchased and received at its facility goods valued in excess of $50,000 directly from points outside the State of Maryland. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Willowbrook Apartments in suburban Maryland is the situs where the 11 Charging Parties worked as maintenance technicians primarily engaged in apartment repairs and renovations including plumbing and electrical work. Some of the individuals were provided free apartments or reduced rents in return for being on call during the evening hours to make emergency repairs to the more than 500 units in the apartment complex. Four of the employees,[4] worked in excess of 8 years for the Respondent. Israel Flores served as the employees' leadsman or group leader and is also able to converse in English.

At all material times, the key supervisory personnel in this case are Michelle Summers-Davis, resident manager, Wayne Ellis, property manager, Joe Dodson, vice president of property management, and Warren Halle, president.

Extensive testimony is contained in the record regarding the deplorable working conditions that the 11 employees were forced to endure. Indeed, on numerous occasions prior to November 4, the employees complained to Summers-Davis and Ellis regarding the lack of satisfactory safety equipment including gloves, boots, and protective masks. Additionally, the employees had previously expressed to Summers-Davis and Ellis dissatisfaction with their pay and demanded higher wages. Davis, on several occasions, explained to the employees that her supervisors were looking into the matter and she was optimistic that something positive might happen in their October 30 paychecks.

B. Facts

On the morning of November 4, since their wages were not increased, all 11 employees went to Davis' office to talk about a number of problems that the employees perceived had not been adequately addressed by the Respondent. With Israel Flores serving as spokesperson, as he was the most proficient in the English language and Summers-Davis did not speak Spanish, the employees concertedly complained regarding their wages, hours, and working conditions by demanding wage increases, uniforms, safety equipment, tools, and better working conditions. Davis replied that she had tried to help the men but she could not do anything more for them and that Wayne was the only one who could give the employees satisfaction. Flores asked Summers-Davis if they could speak to Wayne Ellis and Summers-Davis told the group that she would try to telephone him. The employees left Davis' office and returned to work. Later that morning, Summers-Davis called the employees over the radio and requested that they come to her office. Most of the employees went directly to Summers-Davis' office and were told by Summers-Davis that Wayne said who ever wanted to work could, otherwise, we could go home. Flores told Davis that the employees wanted to meet with Ellis, and Summers-Davis said she would try to reach him. All of the employees placed their keys, pagers, and radios on Summers-Davis' desk and told her they would wait for Ellis so they could talk with him. The employees left the office and went downstairs to the maintenance shop where they ordered a pizza to await Ellis' arrival. Summers-Davis reached Ellis by telephone and apprised him that the employees had turned in their equipment and had just left her office. Ellis arrived at the apartment complex around noon and attempted to reach Flores but was unsuccessful. He obtained the keys to the maintenance shop and proceeded downstairs. Upon opening the door, he observed the employees eating a pizza and said, "All of you are fired, get out of here." The employees left the maintenance shop and proceeded to the front entrance of the building housing the offices. Ellis observed the employees congregating in front of the office, proceeded outside, and told the employees that if they did not leave he would call the police. Shortly thereafter, the police arrived. Flores told the police that most of the employees lived in the apartment complex and could not leave. One of the policemen suggested that the employees purchase some materials to make signs that could be displayed by the employees in front of the apartment complex as long as no one blocked the entrance into the development. This suggestion was followed and for the next 2 weeks a number of employees remained outside the complex carrying signs that notified the public that they had been fired by Respondent for protesting better working conditions and demanding higher wages.

On November 5, Ellis called the employees into the office and said they could have their jobs back if they filled out new applications. When the employees learned that the job offers

[1] All dates are in 1997 unless otherwise indicated.

[2] I reverse my prior ruling and grant the General Counsel's renewed motion to admit GC Exh. 2 into evidence for the reasons stated in the posthearing brief.

[3] As part of the remedy in this case, the Charging Parties seek reasonable attorneys' fees. In this regard, I am not persuaded that the repeated displays of bad-faith or capricious conduct prolonging the litigation as the Board found in *Lake Holiday Manor,* 325 NLRB 469 (1998), are present in the subject case. Accordingly, unlike the award of attorneys' fees in that case, I deny the present request.

[4] Fidel Perez, Roberto Velorio Medina, Francisco Flores, and Israel Flores.

did not include their present benefits and seniority, they all refused to return to work with reduced rights and benefits.

On November 6, Respondent sent employees Roberto Velorio Medina and Jose Alfaro identical letters regarding their apartments.[5]

On or about November 10, Ellis and Dodson contacted Flores and Medina and apprised the two employees that they wanted them along with the two other most senior maintenance technicians, Fidel Perez and Francisco Flores, to return to work. All four employees went to the office that day and were informed by Ellis that they could return to work immediately and retain their present benefits and seniority if they signed a piece of paper.[6]

C. Analysis

In considering whether an employer is a single employer, the Board utilizes the following criteria:

[1] Common management
[2] Centralized control of labor relations
[3] Interrelation of operations; and
[4] Common ownership

Rebel Coal Co., 279 NLRB 141, 143 (1986); *Truck & Dock Services,* 272 NLRB 592 fn. 2 (1984); *Radio Union Local 1264 v. Broadcast Service of Mobile,* 380 U.S. 255, 256 (1965). The determination of whether two nominally distinct entities are under all of the circumstances a single-integrated enterprise is made on a case-by-case basis, *Blumenfeld Theatres Circuit,* 240 NLRB 206, 215 (1979), enfd. 626 F.2d 865 (9th Cir. 1980).

In the instant case there is common management, centralized control of labor relations, interrelation of operations, and common ownership. In this regard, the evidence establishes that Warren Halle is the owner and president of both entities and is totally responsible for all personnel decisions and overall day-to-day operations. Likewise, Respondent has common officers, directors, management and supervision, and share the same premises and facilities with a common telephone number. The Respondent has provided services for and made sales to each other and have interchanged personnel.

I thus conclude, based on the totality of the evidence, that Halle Enterprises, Inc. and Comar Management, Inc. are single employers.

The General Counsel alleges in paragraph 4 of the complaint that the Respondent discharged and refused to reinstate the 11 employees because they concertedly complained about their working conditions and demanded higher wages. Likewise, the General Counsel asserts that on November 6 Respondent sent notices to some employees changing the terms of their rental or evicting them from their apartments at the Willowbrook complex. The Respondent, while admitting that the employees concertedly complained about their working conditions, takes the position that the 11 maintenance technicians resigned or quit their employment when their concerns were not immediately addressed. It steadfastly denies that it fired the 11 employees and, therefore, opines that the Act was not violated and no backpay is due and owing to the employees.

The Board has held that Section 7 protects "concerted activities for the purpose of collective bargaining or other mutual aid or protection." No union need be involved, any activity by a single employee may be protected if it seeks to initiate, induce, or prepare for group action. *Prill (Meyers Industries) v. NLRB,* 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). This protection specifically includes discussions about wages between two or more employees. *Trayco of S.C.,* 297 NLRB 630, 633 (1990). Here, all 11 maintenance technicians complained to Summers-Davis about their working conditions including demanding higher wages and better safety equipment. Indeed, Respondent admits this in paragraph 4(a) of its answer.

Contrary to the position advanced by the Respondent, I find that all 11 employees were discharged by Ellis on November 4 for engaging in protected concerted activities when they jointly complained about their working conditions including demanding wage increases, uniforms, safety equipment, and tools.

I reach this conclusion for the following reasons. First, Davis testified that the 11 employees never told her, while they were in her office on November 4 that they quit or resigned their positions. Second, I fully credit the testimony of Flores, Alfaro, and Medina that Ellis told all of the employees while they were in the maintenance shop on November 4, that they were fired. Ellis did not testify during the hearing and, therefore, the employee's testimony is unrebutted. Third, I find that it would be highly unlikely that if the employees had resigned or quit their positions they would have remained on the premises and ordered a pizza. Rather, I find as testified to by the three employees, they informed Summers-Davis that they would wait for Ellis to arrive at the apartment complex so they could speak with him about their concerns.

The Respondent further argues that even if it is found that it fired the 11 maintenance technicians for protesting about working conditions, any backpay due and owing to senior technicians Fidel Perez, Roberto Velorio Medina, Francisco Flores, and Israel Flores was tolled when those individuals rejected unconditional offers of reinstatement. In this regard, Dodson testified that during the week of November 10, while the employees were demonstrating in front of the apartment complex, he personally informed Flores and Medina that the four senior maintenance technicians could return to work without any conditions. The only thing they would not receive is any money for the time they were away from their jobs. Additionally, Dodson told Flores and Medina that the four senior employees did not have to sign a form or piece of paper as a condition of reemployment. Halle testified that he and Dodson had a meeting with Flores in his office around November 7. He informed Flores, as the supervisor and spokesperson for the maintenance employees, that he wanted the four senior technicians to come back to work without any conditions and they did not have to

[5] The letters state in pertinent part:

> As per conditions of the Amendment of Lease abatement you signed (Mar. 26, 1997), upon your resignation with COMAR Management, Inc., this agreement was null and void. Effective immediately, you are no longer required to reside on the property. This is your 30-day notice to vacate the premises. [G.C. Exhs. 3 and 8.]

[6] The document stated:

> I,_____, understand that in the future, returning my keys, pager and radio, and failing to perform my duties upon request will be an indication that I have resigned my position with COMAR Management. I understand that COMAR management has decided to reinstate me and will continue my benefits as though I had not left due to the short length of time between my leaving and my being reinstated. I understand that participation in legal action against COMAR Management or any of it's agents and the picketing of Willowbrook Apartments while in the employment of COMAR Management is not necessary and will not be tolerated. I have read and agree with the above statements. (GC Exh. 3.)

sign a form limiting their rights in any way.[7] Although Flores testified, he did not address the fact that both Dodson and Halle independently offered him and the three other senior maintenance technicians the opportunity to return to work without any conditions. Rather, in response to a question from the General Counsel, "[D]id the company ever approach you after this time (after his conversation with Dodson during the week of November 10, and the refusal to sign GC Exh. 3), to offer you employment," Flores responded, "[N]o, not after that time." At no time did Flores testify in his direct testimony about his meeting with Halle on or about November 7 (which preceded his conversation with Dodson and the refusal to sign GC Exh. 3). Moreover, neither the General Counsel nor the Charging Party recalled Flores as a rebuttal witness to address Halle's testimony about his meeting with Flores in his office. Under these circumstances, I fully credit the forthright and direct testimony of Halle concerning his offer to Flores on behalf of the four senior maintenance technicians that they could come back to work without conditions or having to sign a form. Since the four employees did not accept this offer, any entitlement for reinstatement or backpay is cut off on November 7.[8] With respect to the seven other maintenance technicians listed in the complaint, I find that the Respondent did not make legitimate offers of reinstatement. In this regard, while the Respondent offered these employees' reemployment on November 5, it came with restrictions. Thus, an offer of reemployment without the emoluments of present benefits and seniority is not a lawful offer that would shield the Respondent from its obligation to fully reinstate these seven employees to their former positions. See *Spitzer Akron, Inc.,* 219 NLRB 20, 24 (1975), enfd. 540 F.2d 841 (6th Cir. 1976), cert. denied 429 U.S. 1040 (1977).[9]

Based on the forgoing, I find that Respondent violated Section 8(a)(1) of the Act by discharging 11 maintenance technicians on November 4 when they concertedly complained about their wages, hours, and working conditions by demanding wage increases, uniforms, safety equipment, and tools.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by terminating 11 maintenance technicians on November 4, 1997, when they concertedly complained about their wages, hours, and working conditions by demanding wage increases, uniforms, safety equipment, and tools.

3. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

[7] Although Dodson's offer of reinstatement still contains restrictions (the only thing that they would not receive is any money for the time that they were away from the job), I conclude that Halle's offer of reinstatement was specific, unequivocal, and unconditional. In this regard, as the president of Respondent, such an offer takes precedence over a subsequent statement of a lower-level management official.

[8] While it could be argued that the issue of reinstatement and backpay for the four senior maintenance technicians is more appropriate for the compliance stage of the case, I am of the opinion that the Board's finite resources should not be used for this purpose if the record is clear that the four employees waived their right to reinstatement.

[9] Contrary to the General Counsel's argument in posthearing brief that the offer of reinstatement made by Halle was invalid because it was not made to all 11 discriminatees, the cited case holds otherwise. See also *Brenal Electric,* 271 NLRB 1557 (1984).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having discriminatorily discharged employees, must offer them reinstatement and make them whole for any loss of earnings and other benefits including their right to live in a rental apartment at either reduced rent or rent free, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

With respect to the offers of reinstatement involving employees Fidel Perez, Roberto Velorio Medina, Francisco Flores, and Israel Flores, reference to the decision is dispositive for the reinstatement date and backpay entitlement for these employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, Halle Enterprises, Inc. and Comar Management, Inc., Silver Spring, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Fidel Perez, Roberto Velorio Medina, Francisco Flores, Nestor Cotton, Juan Manuel Vazquez, Jose A. Alfaro, Jose Garcia, Francisco Gatica, Jose Climes, Donald Urbina, and Israel Flores full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make the above-noted employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter, notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Within 14 days after service by the Region, post at its facility in Silver Spring, Maryland, copies of the attached notice marked "Appendix"[11] in English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 4, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."